

**FILED: SUFFOLK COUNTY CLERK 03/21/2022 02:44 PM**

NYSCEF DOC. NO. 1

INDEX NO. 605121/2022

RECEIVED NYSCEF: 03/21/2022

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK**

**JOHN SIMPSON,**

*Plaintiff,*

*-against-*

**CVS ALBANY, L.L.C. and  
LIBERTY COCA-COLA BEVERAGES LLC,**

*Defendants.*

*To the above named Defendants:*

*You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

*Defendant's address:*

**CVS ALBANY, L.L.C.**  
c/o CVS Pharmacy, Inc.  
Attn.: Melanie Luker  
1 CVS Drive  
Woonsocket, RI 02895

**LIBERTY COCA-COLA BEVERAGES LLC**  
c/o Corporation Service Company  
80 State St.  
Albany, NY 12207

**SIBEN & SIBEN, LLP**  
Attorneys for Plaintiff  
Office and Post Office Address  
90 East Main Street  
Bay Shore, New York 11706  
(631) 665-3400  
File No.: 12/27/21 A

*Index No.  
Date Filed:*

*Plaintiff designates SUFFOLK  
County as the place of trial*

*The basis of venue is  
plaintiff's residence*

**SUMMONS**

*Plaintiff resides at  
45 Jamaica Ave.  
Wyandanch, NY 11798*

*County of SUFFOLK*

**SEND TO YOUR INSURANCE COMPANY PROMPTLY**

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AGF/tv  
 SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF SUFFOLK

-----X  
 JOHN SIMPSON,

Plaintiff,

**COMPLAINT**

-against-

**Index No.**

CVS ALBANY, L.L.C. and  
 LIBERTY COCA-COLA BEVERAGES LLC,

Defendants.

-----X  
 Plaintiff, complaining of the defendants by her attorneys, SIBEN & SIBEN, LLP,  
 respectfully alleges, upon information and belief:

FIRST: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was  
 a domestic corporation duly organized and existing under and by virtue of the laws of the State  
 of New York.

SECOND: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C.,  
 was a foreign corporation authorized to do business in the State of New York.

THIRD: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was  
 a partnership or other unincorporated entity authorized to do business in the State of New York.

FOURTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C.,  
 was the owner and/or one of the owners of a certain CVS retail pharmacy/store located at 1944  
 Deer Park Avenue, Deer Park, New York.

FIFTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its  
 agents, servants and/or employees operated a certain CVS retail pharmacy/store located at 1944  
 Deer Park Avenue, Deer Park, New York.

SIXTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees managed a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SEVENTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees controlled a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

EIGHTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees maintained a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

NINTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., entered into an agreement regarding the delivery and/or sale of Coca-Cola and/or other beverages to the certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

TENTH: That, at all times hereinafter mentioned, defendants, jointly or severally, invited members of the general public to the aforesaid premises for business purposes.

ELEVENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

TWELFTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a foreign corporation authorized to do business in the State of New York.

THIRTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a partnership or other unincorporated entity authorized to do business in the State of New York.

FOURTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was the owner and/or one of the owners of a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

FIFTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees operated a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SIXTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees managed a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SEVENTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees controlled a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

EIGHTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees maintained a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

NINETEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, entered into an agreement regarding the delivery and/or sale of Coca-Cola and/or other beverages to the certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

TWENTIETH: That, at all times hereinafter mentioned, defendants, jointly or severally, invited members of the general public to the aforesaid premises for business purposes.

TWENTY-FIRST: That, on the 27<sup>th</sup> day of December, 2021, while the plaintiff was lawfully at the aforesaid location, he was caused to be precipitated to the floor and become severely injured due to the carelessness, recklessness, and negligence of the defendants, their agents, servants, and/or employees.

TWENTY-SECOND: That the defendants, their agents, servants, and/or employees were careless, reckless, and negligent in the ownership, operation, maintenance, management, supervision and control of the aforesaid retail pharmacy/store; in carelessly, recklessly and negligently causing, allowing and/or permitting the plaintiff to be propelled to the ground and become seriously injured; in failing to provide plaintiff with a safe place to walk; in carelessly, recklessly and negligently causing, allowing and/or permitting narrow aisles to exist at the aforesaid retail pharmacy/store, creating a hazard and a trap; in failing to maintain the aforesaid retail/department store in a safe and proper manner; in failing to expeditiously clear the aisles; in that defendants' agents, servants, and/or employees carelessly, recklessly, and negligently created a tripping hazard while stocking product; in failing to make timely inspections of the aforesaid area which would have disclosed the dangerous and defective condition existing thereat; in failing to foresee this incident; in failing to post signs, notices and/or other warnings of the dangerous and defective condition existing thereat; in failing to erect barricades, fences, ropes, cones or other safety devices for the proper protection of plaintiff and others; that defendants knew, or by reasonable inspection thereof, should have known of the dangerous and defective condition existing thereat and failed to repair and/or remedy the same; in carelessly, recklessly and negligently causing, allowing and/or permitting the aforesaid condition to be and

remain for a long and unreasonable length of time under the circumstances then and there existing; in failing in their non-delegable duties to the plaintiff herein; and, in other ways, acted in a careless, reckless and negligent manner.

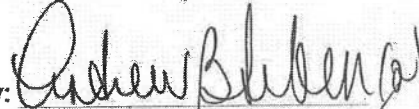
TWENTY-THIRD: That, at all times hereinafter mentioned, defendants had actual, constructive and/or written notice of the aforesaid dangerous and defective condition.

TWENTY-FOURTH: That by reason of the premises, the plaintiff was rendered sick, sore maimed and disabled; and he was injured, bruised and wounded about his head, body and limbs; and upon information and belief, some of his injuries are of a permanent nature and character; and he has suffered and continues to suffer physical pain and mental anguish; and he has been incapacitated, all to his damage in a sum in excess of the monetary limits of any lower courts.

TWENTY-FIFTH: That this action falls within one or more of the exceptions set forth in C.P.L.R. 1602.

WHEREFORE, plaintiff, JOHN SIMPSON, demands judgment against the defendants in a sum in excess of the monetary limits of any lower courts, together with the costs and disbursements of this action.

SIBEN & SIBEN, LLP

By: 

STEPHEN G. SIBEN ( )

ANDREW B. SIBEN ( )

JACQUELINE SIBEN ( )

MARK A. RUDNER ( )

Attorneys for Plaintiff

Office & P.O. Address

90 East Main Street

Bay Shore, New York 11706

(631) 665-3400

File No: 12/27/21 A

FILED: SUFFOLK COUNTY CLERK 04/22/2022 11:14 AM

INDEX NO. 605121/2022

STATE OF NEW YORK  
COUNTY OF SUFFOLK

SUPREME COURT

FILED ON: 03/21/2022

RECEIVED NYSCEF: 04/22/2022  
INDEX NO.: 605121/2022

JOHN SIMPSON

Plaintiff(s)-Petitioner(s)

-vs-

CVS ALBANY, L.L.C., ET AL.

Defendant(s)-Respondent(s)

STATE OF NEW YORK  
COUNTY OF SARATOGA ss.}

I, MARK E. MCCLOSKEY being duly sworn, deposes and says that deponent is over the age of eighteen years, is not a party in this proceeding and resides in New York State.

On APRIL 12, 2022 at 2:00 P.M.

Deponent served two true copies of NOTICE OF ELECTRONIC FILING (MANDATORY CASE) (UNIFORM RULE § 202.5-bb),  
SUMMONS AND COMPLAINTbearing index number: 605121/2022 and date of filing: 03/21/2022  
upon CVS ALBANY, L.L.C.  
at address: SECRETARY OF STATE, 99 WASHINGTON AVENUE  
city and state: ALBANY, NY 12210MANNER OF SERVICE}Personal☐ By delivering to and leaving with personally known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.Suitable Age Person☐ By delivering and leaving with personally at the premises mentioned above. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.Authorized Agent☒ By delivering and leaving 2 copies with AMY LESCH, BUSINESS DOCUMENT SPECIALIST the agent for service on the person in this proceeding designated under Rule 303 LLC and tendering the required fee. Service having been made to such person at the place, date and time above.Affixing to Door, Etc.☐ By affixing a true copy of each to the door of the actual place of business, dwelling place or usual place of abode stated above. Deponent was unable with due diligence to find the proper or authorized person to be served, or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode stated above after having called there on the following dates and times:Mailing☐ Deponent completed service by depositing a true copy of each in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service. The package was labeled "Personal & Confidential" and mailed to the person stated above at address on . The envelope did not indicate on the outside that the communication was from an attorney or concerned an action against the recipient. The envelope was mailed by first class mail certified mail registered mail return receipt requested.DESCRIPTION} deponent describes the person actually served as:

Sex: FEMALE

Race/Skin Color: WHITE

Approximate Age: 45 years Approximate Height: 5'8"

Other:

Hair Color: BLONDE

Approximate Weight: 160 pounds

Subscribed and sworn before me on APRIL 12, 2022

Notary Public, State of New York  
Karen E. Rock  
Qualified in Schenectady County  
Number 01R06065213  
Expires: October 9, 2025

Attorney:

Siben & Siben, LLP  
90 East Main Street  
Bay Shore, NY 11706  
631-665-3400MARK E. MCCLOSKEY  
Deponentaffidavit #: 249973  
NLS#: 22-2847

FIRM FILE # 2270538

FILED: SUFFOLK COUNTY CLERK 04/22/2022 11:14 AM

INDEX NO. 605121/2022

NYSCEF DOC NO. 4

STATE OF NEW YORK  
COUNTY OF SUFFOLK

SUPREME COURT FILED ON: 03/21/2022 INDEX NO.: 605121/2022

RECEIVED NYSCEF: 04/22/2022

JOHN SIMPSON

Plaintiff(s)-Petitioner(s)

-VS-

CVS ALBANY, L.L.C., ET AL.

Defendant(s)-Respondent(s)

STATE OF NEW YORK  
COUNTY OF SARATOGA ss.}

I, MARK E. MCCLOSKEY being duly sworn, deposes and says that deponent is over the age of eighteen years, is not a party in this proceeding and resides in New York State.

On APRIL 12, 2022 at 2:00 P.M.

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SUMMONS AND COMPLAINTbearing index number: 605121/2022 and date of filing: 03/21/2022  
upon LIBERTY COCA-COLA BEVERAGES LLC  
at address: SECRETARY OF STATE, 99 WASHINGTON AVENUE  
city and state: ALBANY, NY 12210MANNER OF SERVICEPersonal

- ☐
- By delivering to and leaving with personally} known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.

Suitable Age Person

- ☐
- By delivering to and leaving with personally} at the premises mentioned above. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.

Authorized Agent

- ☒
- By delivering to and leaving 2 copies with} AMY LESCH, BUSINESS DOCUMENT SPECIALIST the agent for service on the person in this proceeding designated under Rule 303 LLC and tendering the required fee. Service having been made to such person at the place, date and time above.

Affixing to Door, Etc.

- ☐
- By affixing a true copy of each to the door of the actual place of business, dwelling place or usual place of abode stated above. Deponent was unable with due diligence to find the proper or authorized person to be served, or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode stated above after having called there on the following dates and times:

Mailing

- ☐
- Deponent completed service by depositing a true copy of each in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service. The package was labeled "Personal & Confidential" and mailed to the person stated above at address on . The envelope did not indicate on the outside that the communication was from an attorney or concerned an action against the recipient. The envelope was mailed by first class mail certified mail registered mail return receipt requested.

DESCRIPTION deponent describes the person actually served as:Sex: FEMALE Race/Skin Color: WHITE  
Approximate Age: 45 years Approximate Height: 5'8"  
Other:Hair Color: BLONDE  
Approximate Weight: 160 pounds

Subscribed and sworn before me on} APRIL 12, 2022

Notary Public, State of New York  
Karen E. Rock  
Qualified in Schenectady County  
Number 01R06065213  
Expires: October 9, 2025Attorney:  
Siben & Siben, LLP  
90 East Main Street  
Bay Shore, Ny 11706  
631-665-3400MARK E. MCCLOSKEY  
Deponentaffidavit #: 249972  
NLS#: 22-2847

FIRM FILE # 2270539